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This LifeAdvice® brochure about *Taking Legal Action* was produced by the MetLife Consumer Education Center and the Federal Citizen Information Center.

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Many times during your lifetime you'll be involved with the federal, state, or your local municipality's legal system. You'll get a driver's license, get married, borrow money, make a will, get a traffic ticket, have a traffic accident... the list goes on and on. Most of us will deal with these events - pleasant or unpleasant - without too much trouble.

At some point, though, you may run up against a legal situation that's more complicated, and more complicated situations can be worrisome if you're not sure how to handle them. Perhaps you're being sued over a dispute of some kind, or perhaps you'd like to do the suing - if you knew what was involved and how much it would cost. Maybe a parent or other relative has asked you to serve as executor of their estate, but you'd like to understand a little more about it before saying "yes."

When a complex legal matter comes up, you probably have lots of questions, but aren't sure where to get the answers. This brochure will help you answer many of these questions, and guide you in finding other, more individualized answers on your own. It will also provide information to help you find a lawyer that's right for your particular needs.

If You're Involved in a Lawsuit

Thousands of people in the U.S. are named in lawsuits every day. It's not unusual. A lawsuit may result from a fall on your sidewalk, a fender-bender, or just a misunderstanding about the payment of a debt. If you are sued, it's important to know what's involved and to understand your options.

When someone files a lawsuit, they must formally notify everyone being sued. The document that is used to notify those being sued is called a summons. The lawsuit, or complaint, is generally included with the summons. In most jurisdictions, a sheriff or process server delivers or serves the summons, in person, to the individual being sued (or to someone in his or her household). Sometimes, especially in lawsuits involving smaller matters, a summons may be served through the mail; usually registered or certified mail that requires a signed receipt indicating it was delivered. The summons tells the person being sued what they must do to protect their rights to defend the suit. It usually includes the deadline for filing an answer to the complaint. The complaint tells the person being sued why the action was brought against him or her and what the demands are.

The Stages of a Lawsuit

The steps involved in a lawsuit may differ from one court system to another. Therefore, when you receive a summons and complaint, it is important to read them carefully. Usually, when a case is filed and you are served with a summons, a clock starts running. You have a limited time to respond to the lawsuit by filing a document known as an appearance and, in most cases, filing an answer to the complaint. If you fail to take these steps, you may lose your right to dispute the lawsuit and defend yourself.

After you have filed your appearance and answer, a date may be set for either a trial or a report to the court on the status of the case. In the meantime, the parties have the right to conduct discovery. Discovery is a process allowing both sides to find out more about the issues in dispute. People may be required to answer questions under oath in a deposition or through interrogatories. A deposition is an oral examination, while interrogatories are written answers to questions.

In most courts, the judge will try to settle the case after discovery is completed and before the trial. The great majority of cases do settle without going to trial. When a civil case goes to trial, it may be heard and decided by a judge or a jury, depending on the kind of claim being made. Usually there is an additional filing fee to demand a jury. If the case is decided against the person being sued, the judge or jury will also decide how much the damages are.

After a settlement or trial, a court order is written and signed by the judge. The order sets out the obligations resulting from the lawsuit. If there is an order for damages and money is owed, the order can be enforced by various collection methods including wage assignment (i.e., money is taken out of a paycheck), or the sale of assets such as a car or house.

If you lose a lawsuit, you may be able to bring an appeal to a higher court. Appeals can be brought for only a limited number of reasons, though, and are costly and time consuming.

Do You Need a Lawyer or Not?

Sometimes a lawyer is provided to the person being sued at no personal expense. For example, if you are sued because you were in an auto accident, your insurance company will probably provide a lawyer to protect your interests. Of course, it is up to you to contact your insurance company, to give the company notice of a possible claim and to find out if it will provide a lawyer.

Also, if you are sued as an officer or director of a charity or corporation, that organization may provide a lawyer for you. However, you must remember that you are responsible for any suit in which you are named. Therefore, you must immediately inform the agency or organization about the suit. You need to cooperate with the lawyer selected for you, but you should consider the possibility that the lawyer provided for you may have a conflict of interest. A conflict of interest means she or he is responsible to the organization, and the organization's interests may be different from yours. If you believe there is a conflict of interest, you should consult a lawyer that you select personally.

Can You Settle Out of Court?

Many lawsuits result from misunderstandings, and can be resolved in ways other than going to court. If someone is suing you, you may be able to talk to him or her and, perhaps, negotiate an agreement. Or you may be able to resolve the matter with mediation, using the services of a skilled, neutral mediator. Many communities have neighborhood dispute resolution centers providing these services free or at low cost. You may want to consult a lawyer just to help you determine whether options such as these - known as alternative dispute resolution - may be suitable in your case. Remember, though, that even if you seek alternatives to the lawsuit, you must continue to protect your interests by

filing your response and appearing in court.

Defending Yourself

You may decide to defend yourself in a lawsuit instead of retaining a lawyer, especially if it is a matter for small claims court. The small claims division of a court hears only those cases where the money claimed is below a certain level, usually no more than \$1,500 to \$5,000. In small claims court, procedures are generally less formal and the judge sometimes helps the parties resolve the matter. In some small claims courts, however, parties may have a lawyer and demand a formal trial. Keep in mind that if you want to represent yourself, you still can hire a lawyer for advice and, perhaps, coaching.

As you can see, many factors will influence your decision about whether or not to hire a lawyer. One consideration will be the economics of the situation. That is, how much are you being sued for, what is the likelihood you will win or lose in court, do you think a lawyer will improve your chances to win, and how much will the lawyer cost? In the end, you'll need to weigh these and any other factors relevant to the decision.

Finding a Lawyer

Most people find a lawyer through a personal referral from friends, family members, or colleagues at work. Most lawyers focus their practice on a few areas of the law. This is important to remember when evaluating references - just because a lawyer did a good job for your friend who bought a house doesn't mean he or she will be competent to handle something entirely different for you. Keep in mind that your primary goal is to find a capable person to help you address your particular legal issue.

Some other ways to locate an attorney include:

- **The American Bar Association (ABA)** The ABA website, www.abanet.org, has a lawyer referral service but does not make recommendations.
- **State and County Bar Associations** - State and county bar associations often offer a referral service. Look for the number in the telephone directory. The attorneys on these referral lists are often new lawyers starting to build a practice. Although less experienced, they can also be less expensive and more willing to spend time on your case.
- **Martindale-Hubbell Law Directory** - This is a commonly used directory of lawyers and can be found at most public libraries or at www.martindale.com. Individual attorney listings and law firm listings are organized geographically. While the listed law firms predominately serve corporate clients, firms providing personal legal services can also be found.
- **Legal Plans** - Check to see if your employer offers a legal plan as a benefit. These plans typically charge a monthly premium and provide basic advice and consultation, usually over the phone. The legal plan should have a panel of participating law firms that have been prescreened. Some plans offer more extensive services such as short office consultations, the preparation of simple wills and the review of basic legal documents.

Corporate or Personal Attorney?

Most law firms serve either corporate clients or individuals and families. If your business needs help, go to a corporate law firm. Understand, however, that corporate law firms are usually larger and often more expensive. For personal legal problems, look for a lawyer or law firm that handles personal legal matters.

Many lawyers who serve primarily individuals and families are general practitioners and have experience in handling many of the most frequently needed legal services: divorce and family matters; wills and probate; bankruptcy and debt

problems; real estate; criminal; and/or personal injury. Some have a narrower focus. Be sure your lawyer has experience in the area for which you are seeking help.

Narrowing the Field

Once you've identified some candidates, call each attorney on the telephone, describe your legal issue and find out if the attorney handles your situation. Ask whether the attorney will charge you for an initial consultation. Also, ask what the attorney usually charges to handle your kind of case.

The initial consultation is an opportunity for you and the lawyer to get to know each other. After listening to the description of your case, the lawyer should be able to outline your rights and liabilities as well as alternative courses of action. The initial consultation is the lawyer's opportunity to explain what he or she can do for you and how much it will cost. You should not hesitate to ask about the attorney's experience in handling matters such as yours. Also, do not hesitate to ask about the lawyer's fees and the likely results. If you are considering going beyond the initial consultation and hiring the lawyer, request a written fee agreement before proceeding.

How Much Will It Cost?

Fees. Attorney's fees are usually determined by the difficulty of your case, the lawyer's experience and reputation, and/or the result obtained. It's expensive to hire a lawyer. According to a 2003 survey of law firms, the median hourly billing rate for law firm partners is \$250 an hour and \$170 for associates. Rates vary by geographic region, with the highest hourly rates for partners and associates reported in the Middle Atlantic region.

There are three common types of fee arrangements.

- **Hourly Fees** - Lawyers often charge an hourly rate for the time they spend on a case. For example, a lawyer may charge \$170 per hour. If your matter takes only one hour, your attorney's fees would be \$170. If your matter takes 10 hours, your fees would be \$1,700. The disadvantage is that you do not know until the end how much it will cost. When charging by the hour, some lawyers require a "retainer," which is a deposit paid by you in advance - hourly fees and costs (discussed below) are then charged against this deposit. If your lawyer requires a retainer, it should be made clear whether any unused portion is refunded to you at the end of the case.
- **Fixed Fees** - Some lawyers will charge a flat fee set in advance. This is particularly common for simple, easy-to-define matters such as wills.
- **Contingent Fees** - These fees depend on the outcome of your case. They are commonly used in personal injury matters. For example, if you are not successful in recovering any money, then no attorney's fees are paid. If a recovery is made, then the attorney's fees are based on a percentage of the recovery. This contingency arrangement applies only to the attorney's fees and not to costs. The client must pay the costs, regardless of the result. Attorneys sometimes require an advance deposit to be used for the payment of costs.

Costs. Payments made to third parties - or "costs" - are always an additional expense the client must bear. Some common examples of costs include court costs for filing fees and serving papers, costs paid to reporters for depositions and costs paid to investigators. Oftentimes you will pay these expenses through your lawyer.

Sometimes lawyers consider certain overhead expenses to be costs. They will charge separately for such items as photocopying, long distance telephone calls and computer research. Before work begins on your case, you should have a clear understanding as to whether such expenses are included in the lawyer's fee or are billed separately. All of these matters can be made clear in a written fee agreement between you and your attorney.

Making Your Selection

After your initial consultation with each prospective lawyer, ask yourself these questions:

- Did the lawyer listen to me?
- Was I treated with concern?
- Was the lawyer knowledgeable?
- Did the lawyer give me a good understanding of my alternative courses of action?
- Do I understand the range of possible results associated with each course of action?
- Am I clear about the lawyer's fees?

A Bit of Life Advice

Anybody can sue. One of the benefits of our legal system is that it is possible to file a lawsuit over minor matters without the services of an attorney. It is also possible, in some circumstances, to get legal assistance from an attorney without incurring legal fees. The Division for Public Education for the American Bar Association offers general suggestions about these benefits.

Question 1:

A local store has had my deposit on an item I ordered more than two months ago and they still "can't" give me a delivery date, nor are they willing to refund my money. I'm thinking about pursuing a lawsuit. Would this situation be handled in Small Claims Court?

Answer:

State small claims courts handle disputes under a certain dollar amount, usually no more than \$1,500 to \$5,000. (Check with the Small Claims Court where you live for the cut-off.) Many people choose to take their complaints to small claims courts because they are able to represent themselves and avoid lawyers' fees. But before you head to the court clerk's office to file a lawsuit, think carefully about what it will involve.

While justice is what you're after, it may come at an expense - financial, emotional and otherwise. Lawsuits can be expensive, time-consuming and draining. You should first exhaust all opportunities for resolving the conflict out of court.

Talk with the highest-level employee of the organization. Try to negotiate resolution. Follow-up with this person by documenting your conversation and indicating any promises and your expectations in a letter, sent certified or registered with the Post Office.

If your demands are reasonable and still they are met with resistance, a neutral third person may be in order. A mediator generally helps each party evaluate goals and options in order to find a solution that works for everyone. The court or a community mediation service can help you with this process.

If, however, a lawsuit becomes inevitable, you'll have to get prepared for your day in Small Claims Court, by taking several steps including:

- Finding out if your opponent is solvent and has assets you can go after if he or she doesn't pay up. (Even if you win in Small Claims Court, you may not be able to collect what you're owed.)
- Obtaining a complaint form from the clerk of your local Small Claims Court.
- Filing your complaint with the clerk. (Filing fees can range from \$5 to \$40.)
- Gathering all pertinent information such as canceled checks, contracts and correspondence.

Self-representation is the "norm" here, since generally a lawyer's fees will exceed the amount of small claims suits.

However, you can seek pre-trial guidance from a lawyer. If your complaint is transferred to the trial court at the request of the party you are suing, you probably should consider hiring a lawyer. Procedures are more complicated in trial court, and you may be at a disadvantage without a lawyer.

Question 2:

I need to see a lawyer, but I'm afraid I won't be able to afford it. Someone told me I could get a lawyer that will charge me only if I win my case. Is this true?

Answer:

Some lawyers will accept your case on a contingency basis, which means he or she will get a predetermined percentage of the money you are awarded. If you do not win your case, the lawyer is not compensated. Other lawyers charge by the hour and, depending on where you live, these fees can run more than \$200 an hour. Still others will agree to a flat fee. Even if you hire a lawyer on a contingency basis, be aware that you generally will be responsible for court costs, such as filing fees.

To find a lawyer that's best for you, shop around. Ask friends and relatives for referrals, or contact the local bar association. If you need a lawyer, but can't afford one, you might be able to get legal help from your local Legal Aid Society, a group that, within its limited resources, provides free legal assistance in noncriminal matters (check the white pages of your telephone directory). Whatever fee agreement you make with your lawyer, be sure to get it in writing.

Being an Executor

An executor is the person responsible for settling a deceased person's estate. Executor duties include inventorying, appraising and distributing assets; paying taxes; and settling debts owed by the deceased. As executor, you are legally obligated to act in the interests of the deceased, following the wishes expressed in his or her will. If all this sounds a bit overwhelming, keep in mind that you can hire professional help - for example, an attorney to help with the probate process or an accountant to file taxes.

Who Can Be an Executor?

Any person over the age of 18 who hasn't been convicted of a felony can be named executor of a will. Some people choose a lawyer, accountant, or financial consultant because of his or her expertise. Others choose a spouse, adult child, relative or friend, especially if the estate is small. Generally, a family member or friend expects little or no pay for settling the estate and is anxious to get things settled quickly and smoothly. Being an executor can be a lot of work. You have to follow up on many details and may be called upon to help defend the terms of the will against squabbling heirs or unwarranted claims by outside parties. You also need to be able to act quickly in order to preserve the value of the estate. For example, taxes must be filed in a timely manner to avoid penalties.

Because of the many responsibilities involved, it's wise to ask the person being named in a will if he or she is willing to serve as executor. If you've been named executor in someone's will but are unwilling or unable to serve, you need to file a declination, a document declining your designation as executor, with the court. The contingent executor named in the will then steps in. If no contingent executor is named, the court will appoint one.

Responsibilities of an Executor

An executor's first duty is to initiate probate, the formal process of proving the authenticity of the deceased person's will and confirming your assignment as executor. You'll need to file an application to appear before the probate court. The application form is available from the clerk of the probate court (found in the government listings of your local telephone directory). To help you perform your duties, you may want to consult an attorney. Attorney's fees are

generally chargeable to the estate as expenses of administration. Next, you need to notify all parties named as beneficiaries that you have applied to the court to process the will.

When you appear in probate court you'll need the original signed will and a certified copy of the death certificate. You should also be prepared to pay court costs, which are chargeable to the estate. The job of the probate court is to decide the validity of the will, generally a routine affair. This is also the time when parties may challenge or contest the will. A person who challenges a will, or part of a will, must file an objection with the court within a specified amount of time (check your state laws). Challenges to wills can be time-consuming and costly to the estate.

Once the will is determined to be valid by the probate court, you may begin to pay taxes and other claims against the estate and distribute assets to the beneficiaries. If the will is found to be invalid, you must proceed as though there was no will. An administrator will be appointed by the appropriate court to handle the estate. Creditors and taxes must be paid, after which the remainder of the estate, if any, is distributed in accordance with state law.

Your last step is to finalize the estate by filing papers with the probate court. This usually involves providing the court with copies of notices to concerned parties, tax returns and bills paid. The executor must also provide evidence of distribution of the remaining assets, such as signed receipts from the beneficiaries. When the court recognizes the completion of the probate process, you are released from further responsibility as executor.

Costs Incurred by the Executor

Generally, an estate is responsible for paying the executor a fee. This fee may be specified in the will, or it may be determined by state regulation. The executor's fee may be waived if the executor is a close friend or family member. If the executor is an attorney, the law in most states prevents him or her from collecting both an executor's fee and an attorney's fee for legal advice on the estate.

Generally, an executor is entitled to be reimbursed from the proceeds of the estate for expenses incurred in settling the estate. For example, if you live in California and are named executor of an estate in New York, the estate is liable for your commuting costs.

The Executor's Checklist

Settling an estate, even a simple one, involves plenty of loose ends and details. The following list will give you an idea of the many things you may need to do as executor. Use it as a guide, adding or deleting items as needed.

Executor's Checklist

- ☐ Locate the will
- ☐ Obtain a lawyer, if necessary
- ☐ Apply to appear before the probate court
- ☐ Notify beneficiaries named in the will
- ☐ Arrange for publication of notice to creditors and mail a notice to each known creditor
- ☐ Send notices of the person's death to the post office, utilities, banks and credit card companies
- ☐ Inventory all assets and have them appraised, if necessary
- ☐ Collect debts owed to the estate
- ☐ Check with the deceased's employer for unpaid salary, insurance and other employee benefits

- ☐ File for Social Security, civil service or veteran benefits
- ☐ File for life insurance and other benefits
- ☐ File city, state and/or federal tax returns
- ☐ File state death and federal estate tax returns
- ☐ Pay valid claims against the estate
- ☐ Distribute assets and obtain receipts from beneficiaries
- ☐ File papers to finalize the estate

For your own protection, keep a copy of all records for at least two years. And don't hesitate to seek the guidance of a professional if you need help in settling the estate.

Consider It an Honor

If you are named executor for a friend or family member, it's your final act of friendship. The person who chose you trusted and valued your judgment; consider it an honor.

For More Information

Free Pamphlets

The quarterly *Consumer Information Catalog* lists more than 200 helpful federal publications. Obtain a free copy by calling 888-8-PUEBLO; on the Internet at www.pueblo.gsa.gov or by writing:

Consumer Information Catalog
Pueblo, CO 81009

Other Resources

American Bar Association

www.abanet.org

The American Bar Association website has information about the law as well as an online lawyer locator to help you find a lawyer in your area. They do not, however, make specific recommendations.

LawHelp

www.lawhelp.org

LawHelp helps low and moderate income people find free legal aid programs in their communities, and answers to questions about their legal rights.

www.freeadvice.com

FreeAdvice® provides general legal information to help people understand their legal rights in 125+ legal topics, but is not a substitute for personal legal advice from an attorney.

The opinions expressed herein should not be construed as representing the policy or position of the American Bar Association.

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